IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 859.

HARRISON WILLIAMS, CLIFFORD F. STONE, SIDNEY J. WEINBERG, WADDILL CATCHINGS, JOHN FOSTER DULLES, WALTER E. SACHS, HENRY S. BOWERS, CLINTON M. FINNEY, JAMES F. FOGARTY, HERBERT C. FREEMAN, JOHN B. NIVEN, HENRY E. MENDES, FRANCIS J. CLOWES, VICTOR H. STEMPF, EDWIN H. WAGNER, SR., ROBERT C. BROWN, WILLIAM C. BECHERT, JACOB P. FRIEDMAN, ALBERT E. PARDEE, RALPH JONAS, LOUIS E. KILMARX, CHRISTIAN A. JOHNSON, DAVID G. McCORNACK, JOHN H. ECCLES, CLARENCE F. DILLON, OTTO A. PHILIPPP and HUGH B. BAKER,

Petitioners,

against

CARL J. AUSTRIAN and ROBERT C. BUTCHER, as Trustees of CENTRAL STATES ELECTRIC CORPORATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONERS' REPLY BRIEF.

The respondents and the *amicus curiae* have failed to appreciate and integrate their arguments with the jurisdictional scheme under the bankruptcy acts. This may be summarized briefly as follows:

Under the Bankrupt Acts of 1841 and 1867, the federal district and circuit courts were given general jurisdiction over all plenary suits at law and in equity involving assignees

(trustees). By separate section, in each Act, the district court was given summary jurisdiction over bankruptcy proceedings.

The dissatisfaction with the expansive federal power over suits by trustees at law and in equity, and the excessive burden therefrom on litigants and on the federal courts, resulted in sharply restricted federal jurisdiction over such suits under the Bankruptcy Act of 1898.

In the Act of 1898, the district courts were given no jurisdiction at all over plenary suits by trustees at law or in equity, except jurisdiction by consent of the defendant. Section 23-b. The function of the district court, under the Act of 1898, absent consent of the defendant was restricted to sitting as a court of bankruptcy and exercising the summary bankruptcy powers listed in Section 2. This jurisdiction was, however, exclusively federal.* Judicial Code Section 256 (as am.) "Sixth". The jurisdiction of the bankruptcy court over bankruptcy proceedings as set forth in Section 2 of the Act of 1898, has not been changed up to the present time, except to add additional instances in which the bankruptcy court may exercise summary jurisdiction. *Cf.* subdivisions 20, 21. On the other hand, the circuit courts were granted jurisdiction over plenary suits by trustees, brought at law or in equity, but only to the same extent as though bankruptcy proceedings had not been instituted and as though the bankrupt, and not the trustee, were the party litigant.

Until 1911, the Bankruptcy Act afforded no jurisdiction (except consent jurisdiction) to the district courts over law or equity cases brought by trustees and based on state-created rights. Jurisdiction in suits by trustees based on federally-created rights was granted by amendments to the Bankruptcy Act in 1903 and 1910, viz., Sections 60b, 67e and 70e(3). These additional provisions permitted suits by

* The briefs of the respondents and the *amicus curiae* significantly have no answer to our argument that a finding of jurisdiction for this suit in Section 2 makes all such claims exclusively federal.

trustees on federal rights therein specified in federal district courts as well as in state courts.

In 1911 the circuit court was abolished and its jurisdiction was transferred to federal district courts. This resulted in investing the district courts with all general federal jurisdiction under the Judicial Code and with jurisdiction under the Bankruptcy Act over suits at law or in equity by trustees to the same extent as though bankruptcy had not intervened and the bankrupt were the litigant. Additionally, the district courts continued to have the consent jurisdiction under Section 23-b.

In 1938, prior to enactment of Chapter X, the scope of jurisdiction was therefore as follows: The *bankruptcy* court had no jurisdiction to deal with plenary suits brought by the trustee at law or in equity and based on state-created rights, except on consent of the defendant. The *district* courts generally could entertain plenary suits by trustees at law or in equity based on state-created rights only if a federal ground of jurisdiction were present or if the defendant consented to be sued.

Upon enactment of Section 115 of Chapter X, the jurisdiction of the reorganization court proper over plenary suits at law or in equity commenced by the trustee, based on state-created rights, was enlarged from a consent jurisdiction to a jurisdiction to the extent available to equity receivers, without requirement of consent or diversity of citizenship or federal question or requisite amount. This was accomplished by giving to the reorganization court, the court where the petition was filed, the powers of equity receivership courts. Accordingly, by the elimination from Chapter X of Section 23, the federal equity rule became applicable in the home or reorganization court, if the judge invested the trustee with the rights and powers of an equity receiver as provided in Section 187. The general district court jurisdiction in suits at law or in equity by reorganization trustees was reduced by elimination of the consent jurisdiction in Section 23. However, the jurisdiction of the reorganization court was the prime consideration.

Consequently, plenary suits on state-created rights in federal courts other than the reorganization court, by trustees appointed under Chapter X must conform to the jurisdictional requirements of the Judicial Code.

Respectfully submitted,

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RELEVANT SECTIONS OF THE BANKRUPTCY ACT OF 1898 AS CONSTRUED BY RESPONDENTS.*

Sec. 1(7); 30 Stat. 544.
(as enacted in 1898)

"SECTION 1. MEANING OF WORDS AND PHRASES.—a. The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: * * * (7) 'court' shall mean ~~the~~ [*any*] court of bankruptcy ~~in which the proceedings are pending,~~ and may include the referee; * * *."

Sec. 2; 30 Stat. 544, 545.
(as enacted in 1898)

"SEC. 2. That the courts of bankruptcy as hereinbefore defined * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, ~~in vacation in chambers and~~ during their respective terms, as they are now or may be hereafter held, * * *."

Sec. 23(a); 30 Stat. 544, 552.
(as enacted in 1898)